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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,426	04/27/2006	Toshio Matsumoto	P29832	4734
	7590 08/26/200 & BERNSTEIN, P.L.0	EXAMINER		
1950 ROLAND	CLARKE PLACE	-	VO, HAI	
RESTON, VA	20191		ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			08/26/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com pto@gbpatent.com

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)		
10/577,426	MATSUMOTO ET AL.		
Examiner	Art Unit		
Hai Vo	1794		

NOTICE OF APPEAL 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): Solid Delay proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). The status of the claim(s) is (or will be) as follows: Claim(s) rejected: 1,2,4-8,15 and 16. Claim(s) rejected: 1,2,4-8,15 and 16. Claim(s) withdrawn from consideration: 9-12 and 14. AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the a		Hai Vo	1794	
1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following prior of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) ☐ The period for reply expires £ months from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRAL REJECTION. See MFEP 706.37(1). Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRAL REJECTION. See MFEP 706.37(1). Extensions of time may be obtained under 37 CFR 1.138(d). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fee number 5 CFR 1.178(a) is calculated from: (1) the expiration date of the shortered struturory period for reply originally set in the final Office action. (2) as ray reduce any exame patient term adjustment. See 37 CFR 1.74(b). NOTICE OF APPEAL 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 4.13.7 must be filed within two months of the date of filing the Notice of Appeal was been filed, any reply must be filed within the time period set forth in 37 CFR 4.13.7(a). AMENDMENTS ☐ The Proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise the issue of new matter (see NOTE below); (b) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise here issue from the filed p	The MAILING DATE of this communication appe	ars on the cover sheet with the o	correspondence add	ess
application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) \(\) The period for reply expires on; (1) the mailing date of this hadvisory Action, or (2) the date set forth in the final rejection. The period for reply expires on; (1) the mailing date of the final rejection. The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection. The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection. The period for reply expires on; (1) the mailing date of the final rejection. Examiner Note: If No. 1; is checked, check either box (a) or (b), ONLY-CHECK BOX (b) WHEN THE FIRST TEEPLY SHE FIRST TEEPL	THE REPLY FILED <u>13 August 2009</u> FAILS TO PLACE THIS AF	PLICATION IN CONDITION FOR	ALLOWANCE.	
a)	application, applicant must timely file one of the following application in condition for allowance; (2) a Notice of Appe for Continued Examination (RCE) in compliance with 37 C	replies: (1) an amendment, affidavi al (with appeal fee) in compliance	t, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no nevent, however, will the statutory period for reply expire later than \$M MONTHS from the mailing date of the negligible of the mailing date of the state of the mailing date of the state of the mailing date of the state of the mailing date of the final rejection, expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as est often in 0; 9 blooms; if checked. Any reply received by the Office later than three months after the mailing date of the final Office action; or (2) as est often in 0; 9 blooms; if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, or (2) as est often in 0; 9 blooms; if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, or (2) as est often in 0; 9 blooms; if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, or (2) as est often in 0; 9 blooms; if the final rejection, or (2) as est of the intervention of the final rejection or (3) of the proposed amendment (3) filed after a final rejection, but prior to the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). Abortion of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). Abortion of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). Abortion of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). Abortion of Appeal has been filed, any reply received (37 CFR 41.37(a)), and the period of the filed of the filed o	<u></u>	of the final rejection.		
nave been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 2. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They arise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s):	no event, however, will the statutory period for reply expire la Examiner Note: If box 1 is checked, check either box (a) or (I MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f	iter than SIX MONTHS from the mailing b). ONLY CHECK BOX (b) WHEN THE).	g date of the final rejectio FIRST REPLY WAS FIL	n. .ED WITHIN TWO
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Continuation of 11. does NOT place the application in condition for allowance because: The art rejections have been maintained for the following reasons. Applicants contend that the combined teachings of the cited references are not sufficient to establish a prima facie case of obviousness because there are no reasons to modify or combine the references' teachings. The examiner respectfully disagrees. Both Trocsynski and Ito are releated to an implantable article for bone substitutes. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the porous calcium phosphate of Ito for the substrate of Trocsynski motivated by the desire to facilitate osteogenesis activity while maintaining the strength of the implant. Accordingly, there is an incentive, a guidance to combine the teachings of the prior art to achieve the claimed invention, the combination of the references is sufficient to make out the obviousness rejections. Applicants have failed to provide any declaration, any factual evidence showing that the substitution of the porous calcium phosphate substrate would materially defeat the objectives of Trocsynski, the art rejections are sustained. Note the three-dimensionally connected nanotunnel layers and their thickness were already addressed by Trocsynski. Therefore, there is no need for a secondary reference that includes Ito and Ahn to disclose these issues.